

FILED ENTERED  
LODGED RECEIVED

MAY 03 2013 RE

FILED UNDER SEAL

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY



13-CV-00787-CMP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, ex rel.  
TOM BECK,

Plaintiff,

v.

CH2M HILL,

Defendant.

NO. **C13-0787JPD**

FALSE CLAIMS ACT COMPLAINT  
AND DEMAND FOR JURY TRIAL

FILED UNDER SEAL AND IN  
CAMERA PURSUANT TO 31  
U.S.C. § 3730(b)(2)

**I. INTRODUCTION**

1.1 This is an action to recover treble damages and civil penalties on behalf of the United States of America and RELATOR arising out of false and fraudulent invoices Defendant CH2M HILL submitted to the United States Air Force ("USAF"). The USAF paid Defendant's invoices in full, resulting in payments to CH2M HILL that significantly exceeded the amount and value of work performed. This action arises under the provisions of the False Claims Act, 31 U.S.C. § 3729, et. seq. ("the Act").

1.2 The claims against CH2M HILL are based upon invoices CH2M HILL submitted to the USAF in conjunction with construction projects for the Military Family Housing Maintenance Wing at Kadena Air Base in Okinawa, Japan.

FALSE CLAIMS ACT COMPLAINT AND  
DEMAND FOR JURY TRIAL - 1  
(NO. \_\_\_\_\_)

BRESKIN | JOHNSON | TOWNSEND PLLC

1111 Third Avenue, Suite 2230  
Seattle, Washington 98101 Tel: 206-652-8660

SEA 56140

1           1.3    The invoices at issue overstate the amount due for work performed by  
2 subcontractors on two specific projects for the Housing Wing: (a) radon monitoring and  
3 mitigation and (b) utility and concrete repairs.

4           1.4    The USAF paid CH2M HILL the full amount invoiced on both projects,  
5 approximately \$18 million.

6           1.5    Under its contracts with the USAF, CH2M HILL was required to review all  
7 subcontractor invoices for accuracy before approving them and then submitting to the  
8 USAF for payment.

9           1.6    CH2M HILL breached its duty to ensure accurate invoices were  
10 submitted to the USAF.

11          1.7    The submission of such false invoices was a continuing course of  
12 conduct between 2003 and at least 2010.

13          1.8    RELATOR is a United States citizen who brings this action on his own  
14 behalf and on behalf of the United States of America.

15          1.9    As required under the Act, RELATOR has furnished to the Attorney  
16 General of the United States and to the United States Attorney for the Western District  
17 of Washington (or "the Government"), simultaneous with or prior to the filing of this  
18 Complaint, a statement of all material evidence and information presently available to  
19 him related to the Complaint. This Disclosure Statement supports the existence of  
20 overcharges and false claims by the Defendant alleged herein.

21          1.10   Under the Act, this Complaint is to be filed *in camera* and remain under  
22 seal for a period of at least sixty (60) days and shall not be served on the Defendant  
23 until the Court so orders. The Government may elect to intervene and proceed with  
24 the action within sixty (60) days after it receives both the Complaint and the material  
25 evidence and information.

1 **II. JURISDICTION**

2 2.1 Jurisdiction of the claims asserted herein under the False Claims Act is  
3 based upon federal subject matter pursuant to 31 U.S.C. sections 3729, et seq.

4 **III. VENUE**

5 3.1 Venue in the Western District of Washington is based upon 31 U.S.C.  
6 3732(a) and the fact that Defendant CH2M HILL can be found in, resides in, and  
7 transacts business in this district.

8 **IV. PARTIES**

9 4.1 The RELATOR, Tom Beck, is an individual who resides in Homer,  
10 Alaska.

11 4.2 Defendant CH2M HILL is an engineering, construction and operations  
12 company that can be found in, resides in, and transacts business throughout the  
13 United States and around the world. CH2M HILL maintains offices at several locations  
14 within the Western District of Washington, including Seattle, Bellevue, Tacoma, and  
15 Bellingham, Washington.

16 **V. STATEMENT OF FACTS**

17 5.1 Beginning in 2002, the USAF awarded CH2M HILL a multitude of Sole  
18 Source, Cost Reimbursable Task Orders to perform construction work at Kadena Air  
19 Base in Okinawa, Japan.

20 5.2 CH2M HILL's contracts with the USAF included provisions for  
21 construction work for and at the direction of the Military Family Housing Wing at  
22 Kadena Air Base.

23 5.3 CH2M HILL agreed that it would review all subcontractor invoices for  
24 accuracy before approving and submitting to the USAF for payment.

25 5.4 CH2M HILL's work at the Housing Wing consisted of two major projects:  
26 (a) radon monitoring and mitigation, and (b) utility and concrete repairs.  
27

1           5.5     David Sibole was the Chief of Military Family Housing Maintenance at  
2     Kadena Air Base.

3           5.6     Mr. Sibole was responsible for developing the scope of military housing  
4     projects, securing funding, and overseeing the inspection, approval and final  
5     acceptance of the work on behalf of the USAF.

6           5.7     Mr. Sibole's wife, Lisa Sibole, was hired by Defendant CH2M HILL in  
7     2002.

8           5.8     Mrs. Sibole was the Construction Manager on the Task Orders for radon  
9     monitoring and mitigation.

10          5.9     As Construction Manager, Mrs. Sibole was responsible for managing the  
11     site work, and approving and accepting subcontractor work on behalf of Defendant  
12     CH2M HILL.

13          5.10    Mrs. Sibole was replaced by Mike Faurote as Construction Manager for  
14     the radon projects in or around 2007.

15          5.11    CH2M HILL entered into three Prime Contracts with the USAF relating to  
16     radon work: (1) US Air Force Center for Engineering and Environment (AFCEE) World  
17     Wide Environmental Remediation and Construction (WEREC) Contract No. FA8903-04-  
18     D-8670; (2) AFCEE 4-P A/E Services (4P08) – Contract No. F41624-03-D-8595; (3)  
19     AFCEE Environmental Remediation and Construction (ENRAC).

20          5.12    Projects under each of the three Prime Contracts were issued specific  
21     "Task Orders."

22          5.13    A list of Task Orders under each contract with project titles, award dates,  
23     end dates, and revenue, is attached hereto as Exhibit A.

24          5.14    The amount invoiced and collected on the radon projects was  
25     approximately \$3.5 million.

26          5.15    CH2M HILL subcontracted with Linkage of Okinawa to perform work on  
27     the radon projects.

1           5.16 Work on the radon projects was performed on a "Unit Rate" basis,  
2 whereby CH2M HILL paid Linkage for each radon mitigation unit installed.

3           5.17 Mrs. Sibole, and later Mr. Faurote, approved subcontractor invoices that  
4 routinely overstated the number of radon units installed, resulting in Defendant  
5 overbilling the USAF for work performed.

6           5.18 These overbillings are documented in subcontractor invoices in the  
7 CH2M HILL project files that list the number of units invoiced and Final Reports  
8 submitted by CH2M HILL to the USAF that list the number of units actually installed.

9           5.19 The number of units installed was consistently less than the number of  
10 units invoiced to CH2M HILL and ultimately paid for by the USAF.

11           5.20 CH2M HILL knowingly approved subcontractor invoices from Linkage for  
12 significantly more work on its radon projects than was performed and billed the USAF  
13 for false and fraudulent amounts.

14           5.21 The second major project in the Housing Wing consisted of utility repairs  
15 to leaking water lines and replacing concrete sidewalks and patios.

16           5.22 Eric Olness served as CH2M HILL's Construction Manager and Project  
17 Manager for the utility and concrete repairs in the Housing Wing.

18           5.23 Mr. Olness was also Japan Lead for CH2M HILL.

19           5.24 Mr. Olness was responsible for inspecting the subcontractor's work,  
20 documenting and reporting activities and work quantities in a "Daily Report" and  
21 verifying and approving subcontractor invoices.

22           5.25 CH2M HILL entered into two Prime Contracts with the USAF relating to  
23 utility and concrete repairs with the USAF: (1) AFCEE WERC Contract No. FA8903-  
24 04-D-8670 and (2) AFCEE ENRAC Contract

25           5.26 Projects under each of the two Prime Contracts were issued specific  
26 "Task Orders."  
27

1           5.27 A list of Task Orders under each contract with project titles, award dates,  
2 end dates, and revenue is attached hereto as Exhibit B.

3           5.28 The amount invoiced and collected for utility and concrete repairs  
4 between 2003 and 2010 was approximately \$8.5 million.

5           5.29 CH2M HILL subcontracted most of the concrete and utility repair work to  
6 Ryukyu Enterprises of Okinawa.

7           5.30 CH2M HILL subcontracted the work through Master Services  
8 Agreements, which provided daily and hourly unit rates for subcontractor labor and  
9 equipment, and unit rates for materials.

10           5.31 CH2M HILL knowingly approved subcontractor invoices for significantly  
11 more work on its utility and concrete repairs than was performed and billed the USAF  
12 for false and fraudulent amounts.

13           5.32 Overbillings are documented by comparing the Construction Manager's  
14 Daily Reports, which show the amount of work performed, to the invoices submitted to  
15 the USAF.

16           5.33 CH2M HILL replaced Mr. Olness with RELATOR Tom Beck as Japan  
17 Lead in April 2007.

18           5.34 Mr. Beck's responsibilities included oversight of CH2M HILL's  
19 construction work at Kadena Air Base.

20           5.35 Olness remained the Project Manager for the utility and concrete repairs  
21 to the Housing Wing.

22           5.36 CH2M HILL employee Gene Afan was assigned to Olness's previous  
23 position as Construction Manager of the utility and concrete repairs.

24           5.37 Soon after Mr. Beck's arrival, Mr. Afan alerted Mr. Beck to concerns  
25 surrounding the performance of work by subcontractor Ryuku Enterprises on the utility  
26 and concrete repairs.

1           5.38 Mr. Beck investigated the matter and discovered that the subcontractor's  
2 invoices significantly overstated the quantity of work being performed.

3           5.39 Mr. Beck requested documentation from Mr. Olness relating to CH2M  
4 HILL's agreements with the USAF and subcontractors, but Olness refused to provide  
5 Beck with access to any of the requested documents.

6           5.40 Mr. Beck's investigation also led him to discover overbilling in the radon  
7 projects as described above.

8           5.41 Mr. Beck also discovered that Eric Olness of CH2M HILL facilitated  
9 subcontractors (including Ryuku Enterprises and Linkage) to submit false or inflated  
10 change orders to CH2M HILL in exchange for performing renovations to CH2M HILL's  
11 offices. In some cases the cost of the change orders are believed to have resulted in  
12 fraudulent over-billing to the USAF.

13           5.42 Mr. Beck has repeatedly attempted to stop and remedy CH2M HILL's  
14 fraudulent billing practices.

15           5.43 Mr. Beck alerted his supervisor, Stacey Whitten, to the billing practices  
16 as early as July of 2007.

17           5.44 In December 2007, Mr. Beck reported his findings to Chris Williams, a  
18 vice president at CH2M HILL who supervised Ms. Whitten.

19           5.45 Ms. Whitten and the Deputy Program Manager under Mr. Williams, Jay  
20 Gaudlitz, began threatening and harassing Mr. Beck in retaliation. They asserted false  
21 and pretextual complaints about his work performance, and allowed his family's visa  
22 to lapse, requiring him to send his family back to the States at substantial personal  
23 expense.

24           5.46 Ms. Whitten bluntly announced that she would not entertain any further  
25 discussions of misconduct on the Kadena Task Orders.

26           5.47 In 2009, Mr. Beck met with Len Garner, CH2M HILL's legal counsel, to  
27 discuss the issues he had reported to Mr. Williams.



1           5.48 In 2010, Mr. Beck repeated his concerns in e-mail exchanges with  
2 Garner and Williams.

3           5.49 CH2M HILL took no action to remedy the false and fraudulent invoices  
4 and instead collected the full amount invoiced.

5           5.50 Beginning in about January 2008 and continuing to the present, CH2M  
6 HILL retaliated against Mr. Beck for his disclosure and attempts to stop and remedy  
7 CH2M HILL's false and fraudulent practices.

8           5.51 Beginning in 2008, CH2M HILL ceased assigning Mr. Beck new work.

9           5.52 In or around February 2010, CH2M HILL forced Mr. Beck to periodically  
10 take leave without pay.

11           5.53 Even though Mr. Beck remained classified as an exempt salaried  
12 employee, CH2M HILL paid Mr. Beck only for the hours he worked.

13           5.54 In or around May of 2012, CH2M HILL placed Mr. Beck on "Workload  
14 Imbalance."

15           5.55 When an employee is placed on Workload Imbalance, the employee  
16 does not receive benefits and is paid on an hourly basis for work performed.

17           5.56 Mr. Beck has not worked or been paid by CH2M HILL since June 2012.

18           5.57 Mr. Beck currently remains employed by CH2M HILL on Workload  
19 Imbalance.

20           5.58 Mr. Beck has applied to several job openings at CH2M HILL for which he  
21 was qualified.

22           5.59 CH2M HILL has refused to interview or otherwise consider Mr. Beck for  
23 any of those positions.

24           5.60 In or about March 2013, a Program Manager in Korea called Mr. Beck  
25 seeking to hire him as a Senior Site Manager on a military base construction project in  
26 Pyongtaek, Korea.



5.62 After the interview Mr. Beck provided references, including Chris Williams, the Vice President who had overseen the work in Okinawa.

5.63 The Program Manager directed CH2M HILL Human Resources personnel to send Mr. Beck immigration paperwork and indicated he wanted Mr. Beck to begin work as soon as possible.

5.64 A week or so after receiving his references, CH2M HILL told Mr. Beck that the job had been given to someone else.

## **VI. CAUSES OF ACTION**

**Plaintiff seeks damages and relief for the following causes of action:**

## 6.1 Violations of the False Claims Act

6.1.1 The Defendant knowingly presented or caused to be presented false claims for payment to the United States as alleged herein and received payments of federal monies derived from the United States Treasury as a result of such false claims in violation of 31 U.S.C. § 3729(a)(1)(A).

6.1.2 The Defendant knowingly made, used or caused to be made or used a false record or statement to get a false claim paid or approved by the United States in violation of 31 U.S.C. § 3729(a)(1)(B).

6.1.3 The Defendants have conspired with others to get false and/or fraudulent claims paid or approved for payment by the United States in violation of 31 U.S.C § 3729(a)(1)(C).

## 6.2 Retaliatory Actions

6.2.1 The Defendant discriminated against RELATOR/Plaintiff Beck in the terms and conditions of his employment because of lawful acts he undertook in furtherance of this action and/or in an effort to stop the above-referenced violations of the False Claims Act, 31 U.S.C. § 3729(a)(1).

6.2.2 The Defendant's discrimination violates 31 U.S.C. § 3730(h).

**VII. RELIEF REQUESTED**

Plaintiff requests that the court enter judgment against Defendants as follows:

7.1 For full restitution to the United States of all monies wrongfully received by the Defendants from the United States;

7.2 For three times the dollar amount proven to have been wrongfully charged to and paid by the United States to the Defendants;

7.3 For maximum civil penalties for all false records, statements, certification and claims submitted to the United States by the Defendants;

7.4 For an award to RELATOR under 31 U.S.C. § 3730(d);

7.5 For full reinstatement of his employment;

7.6 For all of his lost wages and economic losses as a result of the Defendant's discrimination;

7.7 For two times his lost back pay as provided by 31 U.S.C. § 3730(h)(2);

7.8 For prejudgment interest;

7.9 For RELATOR's costs of suit, including reasonable attorneys' fees; and

7.10 For such other and further relief as the Court deems just and proper.

DATED this 3rd day of May, 2013.

BRESKIN JOHNSON & TOWNSEND PLLC

By: /s/ Daniel F. Johnson

By: /s/ Brendan W. Donckers

Daniel F. Johnson, WSBA No. 27848  
Brendan W. Donckers, WSBA No. 39406  
1111 Third Avenue, Suite 2230  
Seattle, WA 98101  
Phone: 206-652-8660  
Facsimile: 206-652-8290  
djohnson@bjtlegal.com  
bdonckers@bjtlegal.com  
Attorneys for Plaintiff

# EXHIBIT A

[illegible]

